



A.S.(MD).Nos.59 & 74 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 17.10.2025

PRONOUNCED ON : 12.12.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

A.S.(MD).Nos.59 & 74 of 2017
CMP(MD).Nos.4986 and 3912 of 2017

AS(MD).No.59 of 2017

J.Thirupurasundari (died)Appellant /3rd Defendant

2.J.Ravichandran

3.M.Usharani

4.J.Nagarajan

5.P.Padmavathy

6.P.Sangeetha

7.P.Suganya

8.S.Uma (died)

9.S.Meenakshi

10.S.Sriram RohithAppellants/....

(Appellants 2 to 10 are brought on record as legal heirs
of the deceased sole appellant vide Court order dated
12.07.2021)



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(Memo dated 29.01.2021 filed on 10.02.2021 in USR No. 3554, is recorded, to the effect that sole appellant and R1 died vide Court order dated 17.10.2025)

(Memo filed on 04.10.2024 is recorded, as 8th appellant died, and appellants 9 to 10 who are already on record are recorded as LR's of the deceased 8th appellant vide Court order dated 17.10.2025)

Vs

1.Tmt.Meenakshi (died)

2.Tmt.Kalaivani

....Respondents 1 & 2/Plaintiffs 1 & 2

3.B.Padmini

4.Amsapriya @ Pappy

....Respondents 3 & 4/Defendant 1 & 2

5.Vijayalakshmi

(5th respondent is brought on record as legal heirs of the deceased sole appellant vide Court order dated 10.11.2022)

AS(MD).No.74 of 2017

1.M.Meenakshi (died)

2.Tmt.Kalaivani

....Appellants/Plaintiffs

(Memo dated 29.01.2021 filed on 09.02.2021 is recorded to the effect that 1st appellant and R3 died vide Court order dated 17.10.2025)

Vs

1.B.Padmini

2.Amsapriya @ Puppy



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3.J.Thiripura Sundari (died)

4.J.Ravichandran

5.Usharani

6.Nagarajan

7.Padmavathy

8.Sageetha

9.Suganya

10.S.Uma (died)

11.Meenakshi

12.Sriram Rohith

13.Vijayalakshmi

(Respondents 4 to 13 are brought on record as legal heirs of the deceased 3rd respondent vide Court order dated 10.11.2022)

(Memo filed on 04.10.2024 is recorded, as R10 died, and Respondents 11 and 12 who are already on record are recorded as Legal heirs of the deceased R10 vide Court order dated 17.10.2025)

Prayer in AS(MD).No.59 of 2017: The First Appeal filed under Section 96 of C.P.C, r/w Or.41 Rule.1 & 2 of C.P.C to set aside the judgement and decree made in counter claim in O.S.No.38 of 2013 dated 21.09.2016 on the file of the Principal District Court, Ramanathapuram and allow the counter claim of the appellant and allow this appeal.

Prayer in AS(MD).No.74 of 2017: The First Appeal filed under Section 96 of C.P.C, to allow the present appeal and set aside the judgement and decree dated 21.09.2016 passed in O.S.No.38 of 2013 on the file of the Principal



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District Judge, Ramanathapuram and to allow the suit with costs throughout and pass such other suitable orders and thus render justice.

AS(MD).No.59 of 2019:

For Appellants : A1-died
:Mr.K.Baalasundharam
Senior Counsel for
Mr.R.Thangapandian for A2, A3, A5 to A10
:Mr.N.Aariya for A4

For Respondents : R1-died
: Mr.S.Meenakshi Sundaram
Senior Counsel for Mr.T.Lenin Kumar for R2
:Mr.S.Srinivasa Raghavan
for R3 & R4
:Mr.A.Saravanan for R5

AS(MD).No.74 of 2017:

For Appellants :A1-died
: Mr.S.Meenakshi Sundaram
Senior Counsel for Mr.T.Lenin Kumar for A2

For Respondents :Mr.S.Srinivasa Raghavan for R1 & R2
: R3 -died
:Mr.A.Saravanan for R13
: Mr.K.Baalasundharam
Senior Counsel for Mr.R.Thangapandian
for R4 to R9, R11 & R12
: R10 -died



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COMMON JUDGMENT

(Made by **R.VIJAYAKUMAR,J.**)

These two first appeals have been preferred by the third defendant and the plaintiffs respectively in O.S.No.38 of 2013 on the file of the Principal District Court, Ramanathapuram challenging the dismissal of a partition suit.

(A).Pleading of the parties before the trial Court are as follows:

2.According to the plaint averments, the suit schedule properties are the ancestral properties of one Appavu Pillai. The said Appavu Pillai had died leaving behind his three sons namely Jeganathan Pillai, Mari @ K.A.Meenakshi Sundaram Pillai and Subramaniam. All three of them entered into a partition on 14.03.1958 in which the suit schedule properties were allotted to the share of Mari @ K.A.Meenakshi Sundaram Pillai.

3.It is further contended in the plaint that Mari @ K.A.Meenakshi Sundaram Pillai had three wives. His first wife is Padmavathi and the third defendant is the daughter born through the said Padmavathi. The second wife is one Amsavalli, through her, he was blessed with a son Balasubramaniam. The said Balasubramaniam had passed away leaving behind his wife (first defendant) and his daughter (second defendant).

4.It is further contended in the plaint that Mari@ K.A.Meenakshi Sundaram Pillai had married one Meenakshi as the third wife who is is the first plaintiff in the suit. Through her, he was blessed with a daughter by



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name Kalaivani who is arrayed as second plaintiff. It is further contended in the plaint that Mari @ K.A.Meenakshi Sundaram Pillai along with his two daughters and the son Balasubramaniam constituted Hindu joint family and they were all co-parceners along with their father in respect of the schedule mentioned properties.

5.It is further contended in the plaint that Mari @ K.A.Meenakshi Sundaram Pillai had constructed houses and shopping complex in the schedule property from and out of the funds derived by the joint family property. The said Balasubramaniam did not have any separate income and had not developed or purchased property of his own. Mari @ K.A.Meenakshi Sundaram Pillai had passed away intestate on 02.02.2012 at Chennai leaving his wife Meenakshi, his daughters Thiripura Sundari and Kalaivani and the defendants 1 and 2 (as wife and daughter of predeceased son Balasubramaniam) as his legal heirs.

6.It is further contended in the plaint that the defendants 1 and 2 have started claiming that the suit schedule properties are their absolute properties and were making clandestine move to dispose the schedule mentioned properties. The 2nd plaintiff has contended that she has got a right by birth as co-parcener as per Hindu Succession Amendment Act 2005. The plaintiffs have jointly claimed 2/4th share.



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7.The defendants 1 and 2 filed a written statement admitting the relationship of the parties and also admitting the fact that the properties in the hands of Appavu Pillai were ancestral in nature. However, the defendants 1 and 2 contended that only Mari @ K.A.Meenakshi Sundaram Pillai and Balasubramaniam constituted coparcenary. The daughters namely second plaintiff and the third defendant cannot become co-parceners in respect of ancestral properties.

8.It is further contended in the written statement that the houses and shopping complex were not constructed out of the joint family income. They were constructed from and out of the income of the deceased Balasubramaniam. At the time of death of Mari @ K.A.Meenakshi Sundaram Pillai, he had not left any ancestral property.

9.It is further contended in the written statement that the said Mari @ K.A.Meenakshi Sundaram Pillai had executed a registered settlement deed in favour of the third defendant under Ex.X1 on 14.10.1980. The said settlement deed is not valid in view of the fact that a co-parcener is not entitled to gift away a portion of the co-parcenary property. It is further contended that the deceased Balasubramaniam was running a contract business with help of his father-in-law and out of the said income, he had put up houses and shopping complex in the suit schedule properties.



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10.It is alleged in the written statement that Mari @ K.A.Meenakshi Sundaram Pillai was living a wayward life and he was continuously selling various properties in order to meet out his illegal expenses. Therefore, a Panchayat was conducted in which Mari @ K.A.Meenakshi Sundaram Pillai had agreed to execute a release deed in favour of his son namely Balasubramaniam. Accordingly, a release deed was executed on 15.10.1980 and it was registered on 16.10.1980 wherein the share of Mari @ K.A.Meenakshi Sundaram Pillai was released in favour of his son Balasubramaniam after receiving a consideration of Rs.10,000/-.

11.On 16.10.1980 an unregistered family deed was also executed by Mari @ K.A.Meenakshi Sundaram Pillai in favour of his son Balasubramaniam. As per the said document, the debts which could be recovered by Mari @ K.A.Meenakshi Sundaram Pillai were catalogued under 'A' Schedule. The loan amount that have to be cleared jointly by Mari @ K.A.Meenakshi Sundaram Pillai and Balasubramaniam were catalogued under 'B' schedule. The properties that were released in favour of his son Balasubramaniam were mentioned as 'C' schedule property.

12.As per Ex.B3 released deed, the said Balasubramaniam had taken possession of the property and he had executed various registered documents in favour of third parties also. The said Mari @ K.A.Meenakshi Sundaram Pillai had passed away only on 02.02.2012. For more than 30 years, Mari @



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K.A.Meenakshi Sundaram Pillai has not disputed the property rights of his son Balasubramaniam.

13.It is further contended that in the written statement that once K.A.Meenakshi Sundaram Pillai had released his share in the co-parcenary property in favour of his son Balasubramaniam, thereafter, there is no co-parcenary property at all. In such circumstances, the second plaintiff and the third defendant cannot claim that they become co-parceners along with his father and their brother Balasubramaniam based upon Hindu Succession Amendment Act 2005. The properties have become absolute properties of Balasubramaniam after the released deed executed by K.A.Meenakshi Sundaram Pillai on 15.10.1980.

14.It is further contended in the written statement that Balasubramaniam during his life time had created layout in the portion of the first schedule property in the year 1983 and sold it to third parties. Another portion has also been sold to third party. He has put up construction in the first schedule property. As far as second schedule property is concerned, the said Balasubramaniam has executed a registered settlement deed in favour of his son (second defendant) on 21.07.1997.

15.Since the plaintiffs are out of possession, the Court fee paid under Section 37(2) of Tamil Nadu Court Fees and Suits Valuation Act is not proper. It was further contended that though paper notification was issued by the



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plaintiffs for 8 items of suit schedule properties, the present suit has been filed only of 3 items. Therefore, the present suit is not maintainable. In fact, Balasubramaniam had obtained a plan approval in the year 2003 itself and has put up construction. The suit schedule properties are absolute properties of Balasubramaniam and after his death, it has devolved upon the defendants 1 and 2. Hence, they prayed for dismissal of the suit.

16.The third defendant who is daughter through the first wife and Mari @ K.A.Meenakshi Sundaram Pillai had filed a written statement supporting the case of the plaintiffs. She had claimed 5/16th share in the suit schedule properties and paid Court fee also.

17.On the side of the plaintiffs, Exs.A1 to A3 were marked and second plaintiff was examined as PW1. On the side of the defendants, Ex.A1 to A20 were marked and the first defendant was examined as DW1. One of the attestors of Ex.B3 was examined as DW2. Exs.X1 and X2 were marked through third party witness.

18.The trial Court after considering the oral and documentary evidence, has arrived at the following findings:

(i).There was a good relationship between Balasubramaniam and his father Mari @ K.A.Meenakshi Sundaram Pillai. Hence, K.A.Meenakshi Sundaram Pillai did not make any claim over the suit schedule properties from his son.



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(ii) Exs.B5 to B20 would establish the fact that the said

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Balasubramaniam had obtained loan from Karur Vysya Bank for construction of the house and he has also constructed shopping complex.

(iii).The plaintiffs knew about the possession and enjoyment of the suit schedule properties 1 to 3 by Balasubramaniam, in view of the fact that the said Balasubramaniam has got patta and constructed house and shopping complex by getting loan and also has repaid the loan. Even though the plaintiffs and the third defendant had knowledge about the same, they have not claimed partition.

(iv)Ex.B3 release deed has been executed by K.A.Meenakshi Sundaram Pillai in favour of his son Balasubramaniam on 15.10.1980 which was registered on 16.10.1980. Since the plaintiffs have admitted that their father was a well known person in the locality, the Registrar himself has identified the executor of Ex.B3.

(v).One of the attestors of Ex.B3 namely Subramanian who is brother of K.A.Meenakshi Sundaram Pillai had passed away and therefore, the other attestor who is an Advocate has been examined as DW2. The evidence of DW2 has not been discredited and therefore, the defendants have proved Ex.B3.



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(vi)Ex.B4, though an unregistered document, it mentioned about the loan to be recovered by K.A.Meenakshi Sundaram Pillai and the loan which have to be cleared by the father and the son. Though the suit schedule properties are mentioned as 'C' schedule property under Ex.B4, the rights of defendants 1 and 2 do not flow from Ex.B4, but only from Ex.B3 which is a registered document.

(vii)Though schedule of properties have not been mentioned under Ex.B3, it has to be read in conjunction with Ex.B4 which contains the particulars of immovable properties. Since Ex.B4 is used only for collateral purposes, the validity of the same cannot be questioned. The plaintiff or the third defendant have not made any claim even after enactment of Hindu Secession Amendment Act 2005.

(viii). K.A.Meenakshi Sundaram Pillai had executed a registered release deed in favour of the other co-parcener namely Balasubramaniam in the year 1980 itself. Therefore, when the amendment in the Hindu Succession Act came in the year 2005, there was no co-parcenary property. Therefore, the plaintiffs or the third defendant cannot claim themselves to be co-parceners.

(ix)The cross examination of PW1 would clearly establish that Balasubramaniam and defendants 1 and 2 have been exclusively enjoying the suit schedule properties with the knowledge of the



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plaintiffs and the third defendant for more than 30 years. The daughters cannot be treated as co-parceners under Hindu Succession Amendment Act 2005, in view of the fact that the father K.A.Meenakshi Sundaram Pillai has executed a registered release deed in favour of other co-parcener in the year 1980 itself.

19. Based upon the above said findings, the trial Court had dismissed the suit for partition. Challenging the same, the plaintiffs and the third defendant have preferred independent appeals.

20.Points of consideration:

(i).Whether the defendants 1 and 2 have proved execution of Ex.B3 release deed in favour of Balasubramaniam?

(ii).Whether the plaintiffs and the third defendant are co-parceners along with the defendants 1 and 2 ?

(B).Submissions of the learned counsels appearing on either side:

21.The learned Senior Counsel appearing for the appellants (Plaintiffs) in AS.No.74 of 2017 contended that the suit schedule properties are admittedly ancestral properties both in the hands of Appavu Pillai as well as in the hands of Mari @ K.A.Meenakshi Sundaram Pillai. It is also an admitted fact that both of them have died intestate. In such circumstances, the defendants 1 and 2 having failed to prove Exs.B3 and B4 documents, the trial Court ought to have decreed the suit for partition. He had further



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submitted that Ex.B3 release deed said to have been executed by K.A.Meenakshi Sundaram Pillai, does not mention the value of the properties nor has a schedule of properties. The defendants 1 and 2 have not established the fact that a sum of Rs.10,000/- as mentioned in the said document has been paid by Mari @ K.A.Meenakshi Sundaram Pillai.

22.That apart, DW2 who is said to be the attesor of Ex.B3 has categorically stated that he has not even gone inside the Registrar Office. In such circumstances, Ex.B3 document is neither a valid document and even assuming that it is a valid document, it has not been proved in accordance with law.

23.The learned Senior Counsel had relied upon a judgement of the Hon'ble Supreme Court reported in **(1987) 3 SCC 294 (Thamma Venkata Subbamma (dead) by LR Vs. Thamma Rattamma and others)** and submitted that as far as co-parcenary property is concerned, a co-parcener does not have any right to gift away a portion of the property. He had further pointed out that Ex.B4 is a family consent deed cum release deed which is an unregistered document. Only under the said document, the suit schedule properties are shown as 'C' schedule properties. When no schedule of property has been mentioned under Ex.B3 and it is mentioned only in Ex.B4 which is an unregistered document, it cannot be construed that K.A.Meenakshi Sundaram Pillai has released his share in the co-parcenary



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property in favour of his son. He also raised doubts over the manner of execution of Exs.B3 and B4. He further submitted that both these documents were executed only under the influence and pressure exerted by the second wife namely Amsavalli. He had further submitted that in Ex.B3 document, the stamp papers have been purchased from Erode and for Ex.B4 document stamp papers have been purchased from Ramanathapuram. When both the documents are said to have been executed on the same date, the purchase of stamp papers is clearly suspicious and create doubts over the genuineness and validity of those documents.

24.The learned Senior Counsel had further submitted that Ex.B3 has been executed under the compulsion of Mediators. Therefore, the document is not valid in view of the influence exerted by Balasubramaniam and his mother Amsavalli.. He had further submitted that the close relatives, namely his daughter through the first wife and third wife have been excluded and no arrangements have been made for them. In such circumstances, it creates suspicion over the document.

25.The learned Senior Counsel had further contended that under Ex.B3 release deed, the schedule of properties have not been mentioned. Only under Ex.B4, an unregistered family consent deed, the properties have been mentioned in the 'C' schedule. Therefore, both of them have to be read together. Since the release of share is mentioned under Ex.B4 and it is an



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unregistered document, as a consequence Ex.B3 would also become an invalid document. The learned Senior Counsel further relied upon the cross examination of DW1 and pointed out that Balasubramaniam did not have any independent income to purchase the properties. DW1 was aware of the execution of Exs.B3 and B4. He had further pointed out that she has admitted that the stamp papers for Ex.B4 were purchased from Ramnad and Ex.B3 from Erode when the dispute arose between the father and the son.

26.The learned Senior Counsel had further pointed out DW1 has categorically admitted only for allotment of property in favour of Balasubramaniam, Ex.B4 has been executed. Therefore, according to the learned Senior Counsel, Ex.B4 document, being an unregistered document, is clearly invalid in the eye of law. He had further stated that the payment of Rs.10,000/- under Ex.B3 is not reflected in Ex.B4 document.

27.The learned Senior Counsel also relied upon the cross examination of DW2 who is one of the attestors of Ex.B3 wherein DW2 has categorically admitted that execution of Exs.B3 and B4 was preceded by Pachayats. Therefore, it is clear that those documents were executed only under the pressure from the Mediators. He had further pointed out that DW2 has categorically admitted that he has not seen Mari @ K.A.Meenakshi Sundaram Pillai sign the document within the Sub-Registrar Office. Therefore, according to the learned Senior Counsel, Ex.B3 has not been proved by



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defendants 1 and 2 and therefore, the properties are continuing as co-parcenary properties on the date of filing of the suit for partition.

28.The learned Senior Counsel appearing for the appellant (3rd defendant) in A.S.No.59 of 2017 submitted that though Mari @ K.A.Meenakshi Sundaram Pillai is said to have executed a settlement deed on 14.10.1980 in favour of the third defendant, there is no proof to show that it was accepted by the third defendant. The third defendant is not a signatory to the document. In fact, the third defendant was not at all aware of the document. It was executed by Mari @ K.A.Meenakshi Sundaram Pillai and his son Balasubramaniam jointly and therefore, it is not within the knowledge of the third defendant and hence, the same is not mentioned in the written statement filed by the third defendant.

29.The learned senior counsel appearing for the appellant in AS.No.59 of 2017 had further submitted that Exs.B3 and B4 are surrounded by suspicious circumstances. Ex.B3 stamp papers were purchased from Erode and Ex.B4 stamp papers were purchased from Ramnad. Even though both these documents were said to have been executed on the same date, the stamp papers have been purchased from two places which are located far away. In fact, all the legal heirs have been disinherited and these documents have been executed at the instance of the first defendant. Under the influence of the first defendant, Exs.B3 and B4 have been created. At the time of execution of



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document, K.A.Meenakshi Sundaram Pillai was under the care and custody of the son and he has exerted undue influence upon his father. Hence, the document is vitiated under Section 16(3) of the Contract Act.

30.The learned Senior Counsel relied upon **1970 (3) SCC 159 (Lakshmi Amma and another Vs. Talengala Narayana Bhatta and another)** and contended that where under a deed of settlement, the entire property is settled in favour of one of the grandsons to the exclusion of other grandchildren, it creates grave suspicion as to the genuineness of the execution of document. In the present case, all the legal heirs have been disinherited and a release deed is said to have been executed in favour of Balasubramaniam. Therefore, according to him, it is a suspicious document and the defendants 1 and 2 have not let in any evidence to dispel the said suspicion.

31.The learned Senior Counsel appearing for the third defendant had further submitted that K.A.Meenakshi Sundaram Pillai was having infirm mind and therefore, he was not in a fit condition to execute Ex.B3 or Ex.B4 document. He had further submitted that there is no schedule of property in Ex.B3 release deed and therefore, the said document is not valid in the eye of law. One of the co-parceners has no right whatsoever to gift the co-parcenary property without consent of other co-parceners. He relied upon the judgment of the Hon'ble Supreme Court reported in **(2000) 7 SCC 409(Thimmaiah**



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and others Vs. Ningamma and another) for the above said preposition of law. The learned Senior Counsel had further submitted that it has been admitted by DW2 in his cross examination that Ex.B4 was executed to evade the stamp duty. When a document has to be registered under Section 17 of the Registration Act and in order to avoid the payment of stamp duty, if an unregistered document is created, the same will not confer any right upon the alleged beneficiary under the document. Hence, he prayed for allowing the appeal.

32.The learned Senior Counsel had also relied upon a judgment of the Hon'ble Supreme Court reported in **(2020) 9 SCC 1 (Vineeta Sharma Vs.Rakesh Sharma and others)** specifically paragraph No.137 and contended that the provisions contained in Section 6 of the Hindu Succession Act 1956 confer status of co-parcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities. Therefore, according to him, the second plaintiff and the third defendant being daughters of the deceased K.A.Meenakshi Sundaram Pillai would become coparceners along with K.A.Meenakshi Sundaram Pillai and Balasubramaniam. Therefore, they are entitled to make a claim for a share in the suit schedule properties. Hence, he prayed for allowing the appeal.

33.Per contra, the learned counsel appearing for the respondents /defendants 1 and 2 submitted that there is no dispute that the



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character of the suit schedule properties are co-parcenary in the hands of K.A.Meenakshi Sundaram Pillai. Both K.A.Meenakshi Sundaram Pillai and his son Balasubramaniam constituted co-parcenary. Out of these two co-parceners, one of the co-parcener namely K.A.Meenakshi Sundaram Pillai has executed a registered release deed in favour of his son Balasubramaniam under Ex.B3 on 15.10.1980. Therefore, after 15.10.1980, there is no co-parcenary at all.

34.The learned counsel appearing for the defendants 1 and 2 further submitted that the defendants 1 and 2 in their written statement have specifically pointed out Ex.B3 release deed. However, no reply statement has been filed by the plaintiff either admitting the release deed or questioning the genuineness or validity of the release deed. Therefore, no such contention can be raised for the first time in the first appeal.

35.The learned counsel for the respondents further submitted that the third defendant who is a beneficiary of Ex.X1 settlement deed has not referred to the said document in her written statement. Though the plaintiff contends that such a settlement deed is void in the eye of law, the document has not been put to challenge by the plaintiff. He had further submitted that the consideration of Rs.10,000/- was paid by Balasubramaniam to his father for releasing his share under Ex.B3. Rs.10,000/- was a huge amount in the year 1980. The father namely Mari @ K.A.Meenakshi Sundaram Pillai who



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was alive for more than 33 years, has not chosen to challenge the said document at any point of time. Therefore, at this length of time, the genuineness and validity of the said document cannot be questioned by the plaintiffs or the third defendant.

36.The respondents had further submitted that Ex.B4 was executed only for collateral purpose to catalogue the amount that can be recovered by K.A.Meenakshi Sundaram Pillai and the loan that has to be cleared by K.A.Meenakshi Sundaram Pillai and his son Balasubramaniam. Incidentally, the properties that are released in favour of Balasubramaniam have been mentioned as 'C' schedule properties in Ex.B4. The said document was relied only to establish that the arrangement between the father and the son was genuine and valid.

37.The learned counsel for the respondents had further submitted that Ex.B3 is a registered document under which the share in the co-parcenary property has been released by K.A.Meenakshi Sundaram Pillai in favour of his son. Therefore, the defendants 1 and 2 claim their right only in a registered document. The learned counsel for the respondents relying upon Paragraph No.69 of the judgment of the Hon'ble Supreme Court reported in **(2020) 9 SCC 1** contended that the daughters would become co-parceners only if the co-parcenary existed on 09.09.2005. In the present case, the release deed was executed by one of the co-parceners in favour of other co-



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parcener in the year 1980 itself. When there was no co-parcenary property as on 09.09.2005, the present suit for partition laid in the year 2013 is clearly not maintainable.

38.The learned counsel for the respondents, relied upon the cross examination of PW1 wherein she had admitted that out of 18 items that were allotted to the share of K.A.Meenakshi Sundaram Pillai in the partition, 9 of them have been sold away. It is further admitted by PW1 that the property that was gifted by K.A.Meenakshi Sundaram Pillai in favour of third defendant has been sold away by the third defendant and the said property has not been included as a suit schedule property. Therefore, according to him, the suit is bad of partial partition. The learned counsel had relied upon Section 35(1)(a) of the Registration Act and contended that when the Sub-Registrar personally knows the executor of the document, identifying witness is not essential. In the present case, PW1 herself had admitted during the cross examination that her father is a well known person in the locality. In such circumstances, the Sub Registrar had identified K.A.Meenakshi Sundaram Pillai and has proceeded to register the document. Therefore, the absence of identifying witness before the Sub-Registrar does not vitiate the document.

39.The learned counsel for the respondents also relied upon the deposition of DW1 wherein suggestion put to her questioning the



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genuineness of signature of K.A.Meenakshi Sundaram Pillai has been negated. He had further submitted that there are no pleadings before the trial Court questioning the genuineness and validity of Ex.B3 or B4 document. They have also not filed any reply statement to the written statement filed by the defendants. In such circumstances, in the stage of first appeal, the genuineness and validity of Exs.B3 and B4 cannot be questioned. That apart, the mental status of K.A.Meenakshi Sundaram Pillai or his health condition was also not questioned in the pleadings before the trial Court.

40.The learned counsel for the respondents had further submitted that there are no pleadings contending that Exs.B3 and B4 documents are sham and nominal. In such circumstances, such a plea cannot be raised before the First Appellate Court. He relied upon Exs.B5 to B20 relating to the mutation of revenue records, alienation made by Balasubramaniam and settlement deed executed by K.A.Meenakshi Sundaram Pillai in favour of his son and contended that these documents would clearly establish that Ex.B3 has been acted upon even during the life time of K.A.Meenakshi Sundaram Pillai. Hence, he prayed for dismissal of the appeal.

41.We have considered the submissions made on either side and perused the material records.

(C).Analysis:

42.The present suit for partition has been filed seeking to partition the



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properties that were allotted to the share of Mari @ K.A.Meenakshi Sundaram Pillai in a partition deed dated 14.03.1958. Therefore, there is no dispute whatsoever that the suit schedule properties are ancestral properties in the hands of deceased Mari @ K.A.Meenakshi Sundaram Pillai.

43.K.A.Meenakshi Sundaram Pillai had three wives. The third defendant is the daughter through his first wife. The defendants 1 and 2 are the legal heirs of one Balasubramaniam who is the son through the second wife. The first plaintiff is the third wife and the second plaintiff is her daughter. It is also not in dispute that only after the death of the first wife, he got married to the second wife and after the death of the second wife, he had got married the third wife. Therefore, the validity of the marriages and genealogy are not in dispute.

44.When the suit schedule properties are ancestral properties in the hands of K.A.Meenakshi Sundaram Pillai, we have to consider who are the co-parceners and who are entitled to have a share over the suit schedule properties.

45.The daughters namely the second plaintiff and the third defendant along with their father K.A.Meenakshi Sundaram Pillai and their brother Balasubramaniam are co-parceners by virtue of Section 6(1) of Hindu Successful Amendment Act 2005. However, as per Section 6(5) of the said Act, if the property has already been partitioned under a registered deed



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prior to 20.12.2004, the daughters of a co-parcener by birth cannot become a co-parcener or claim any right in the co-parcenary property. In the present case, the father K.A.Meenakshi Sundaram Pillai and the son Balasubramaniam alone constituted a co-parcenary prior to the coming into force of Hindu Succession Amendment Act 2005. One of the co-parceners namely K.A.Meenakshi Sundaram Pillai has executed a registered release deed in favour of his son Balasubramaniam under Ex.B3 on 15.10.1980. Therefore, when the Hindu Succession Amendment Act 2005 came into force, there was no co-parcenary in the hands of K.A.Meenakshi Sundaram Pillai so as to attract Section 6(1) of Hindu Succession Act 1956 in order to enable the daughter to become a co-parcener. The property had already been released in favour of another co-parcener namely Balasubramaniam who had become the absolute owner of the property.

46.The learned Senior Counsel appearing on behalf of the appellants in both the cases has questioned the genuineness and validity of Ex.B3 release deed dated 15.10.1980. According to them, the schedule of property has not been mentioned and there is no proof that Rs.10,000/- was paid by Balasubramaniam to his father as recited in Ex.B3 release deed. Further, they have also questioned the mental capacity of K.A.Meenakshi Sundaram Pillai at the time of execution of Ex.B3. They have further contended that the said document was executed due to the pressure and undue influence exerted by



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the second wife namely Amsavalli and her son Balasubramaniam. According to them, these are the vitiating factors that would affect the genuineness and validity of the said document.

47. In the plaint, there is no reference about Ex.B3 release deed and it has not been attacked on any one of the grounds as raised by the appellant in the present appeal. In the written statement, the defendants 1 and 2 have specifically pointed out that Ex.B3 released deed has been executed by the father in favour of the son on 15.10.1980 and thereafter, there is no co-parcenary to enable the daughters to make a claim for a share in the suit schedule property. However, no reply statement has been filed attacking the genuineness and validity of the said document.

48. Even during the cross examination of DW1, only a suggestion has been put to the effect that it is not the signature of K.A.Meenakshi Sundaram. No suggestion has been put to the effect that it is a sham and nominal document or it was executed under undue influence. No suggestion has been put to the defendants' side witness that no consideration has passed as recited under the release deed.

49. It was further contended on the side of the appellant that the stamp papers for Ex.B3 have been purchased at Erode and Ex.B4 document stamp papers have been purchased at Ramnad. Though both the documents are said to have been executed on the same date, the stamp papers have been



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purchased from two places which are far away. Merely because stamp papers have been purchased in two different places for two different documents, that cannot be a ground to suspect the genuineness or validity of the document.

50.That apart, it is contended that Ex.B3 has been brought about by compulsion of Mediator and the said document having the effect of disinheriting the close relatives, it creates suspicious situation. Though it is admitted by DW2 that there was a Panchayat before execution of Ex.B3, the plaintiffs are not able to establish the fact that there was a compulsion from any Mediators or one of the family members to K.A.Meenakshi Sundaram Pillai to execute Ex.B3 document. The said K.A.Meenakshi Sundaram Pillai and his son Balasubramaniam alone constituted the co-parcenary. One of the co-parceners has executed the release deed in favour of the other co-parceners. Only in cases where a Will is executed disinheriting the close relatives, the same could be considered to be one of the suspicious circumstances. However, in the release deed executed by one of the co-parceners in favour of the other co-parcener (especially when the second plaintiff and the third defendant were not co-parceners in the year 1980), the allegation of disinheritance cannot be countenanced.

51.It has been further contended on the side of the appellant that Ex.B3 document does not have schedule of property, only Ex.B4 which is an unregistered document has got a schedule of property. A perusal of Ex.B3



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which is a registered document clearly reveals that K.A.Meenakshi Sundaram Pillai has categorically referred that he is releasing his share in all the family properties and he has admitted that he has received Rs.10,000/- as a consideration for the execution of the said release deed. It is not the case of the appellant that the release is restricted only to some of the co-parcenary properties. In such circumstances, when the document recites that a co-parcener is releasing his rights in all the properties, non cataloguing of the schedule of properties would not in any way vitiate the said document.

52.It is further contended by the appellants that the defendants 1 and 2 are claiming title only under Ex.B4 which is an unregistered document. A perusal of Ex.B4 reveals that it has been executed on the date when Ex.B3 was executed. Under Ex.B4, the dues that can be recovered by K.A.Meenakshi Sundaram Pillai have been listed out as schedule 'A'. The loan that have to be cleared by the father and son are catalogued under 'B' schedule. The properties that are released in favour of the son are listed as 'C' schedule property. In fact, the defendants 1 and 2 are claiming their title only under Ex.B3 registered document. Ex.B4 has been entered into between the father and son only for readjustment of certain rights with regard to the right to recover the loan or for clearing the loan obtained from third parties. The present suit is for partition of immovable properties. DW2 during his cross examination has admitted that in case if money transactions are reflected in



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Ex.B3, it would attract higher stamp duty and therefore, a separate family consent deed was executed under Ex.B4. This is a plausible explanation.

When the plaintiffs are not challenging any money transaction, the non-registration of Ex.B4 would not in any way vitiate the validity of Ex.B3 registered release deed.

53. K.A.Meenakshi Sundaram Pillai has executed a release deed on 15.10.1980 and he had passed away after 32 years in the year 2012. Though it is contended that Balasubramaniam has not taken care of his father, during the entire life time of 32 years after execution of release deed, the said Mari @ K.A.Meenakshi Sundaram Pillai has never questioned the genuineness or validity of Ex.B3. Therefore, vitiating factors that are raised by the learned counsel for the appellants for the first time in the first appeal do not deserve any consideration.

54. On the date of execution of Ex.B3 release deed in favour of Balasubramaniam, the father K.A.Meenakshi Sundaram Pillai has executed a registered settlement deed in favour of the third defendant (daughter through first wife) under Ex.A1. The third defendant has not referred the said document in her written statement. PW1 during her cross examination has categorically admitted that the property gifted to the third defendant has been alienated by her. Though the third defendant has paid Court fee and sought partition, has not entered into witness box. In such circumstances, it is clear



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that the third defendant has only tried her luck in getting the share in the suit schedule property after alienating the property gifted in her favour by the father.

55. When PW2 has categorically admitted in her cross examination that her father was a well known person in the locality, identification made by the Sub-Registrar himself (instead of a third party identifying witness at the time of registration of Ex.B3), cannot be found fault with. In fact, Section 35(1)(a) of Registration Act empowers the Registrar to identify the executor of the document. Only in cases, if he is not able to identify, an attesting witness is required. Therefore, the absence of an attesting witness before the Sub-Registrar at the time of execution of Ex.B3 cannot be found fault with.

56. When there was no co-parcenary on the date of coming into force of Hindu Succession Amendment Act 2005, the plaintiff and the third defendant cannot be considered to be co-parceners with a right to claim a share in the property. When the genuineness and validity of Ex.B3 has not been discredited, the son namely Balasubramaniam has become the absolute owner of the property by way of beneficiary of Ex.B3 release deed. After the death of Balasubramaniam, it has devolved upon the defendants 1 and 2. Even during the life time of Balasubramaniam, he has executed a settlement deed in favour of the second defendant. The mutation of revenue records have taken place. He has also alienated a portion of the property under Ex.B13 on



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11.06.1992. Based upon Ex.B15 settlement deed, the second defendant has also got patta mutated in her name under Ex.B16. Balasubramaniam had approached the authorities concerned and has obtained a layout approval and plan approval for putting up construction. The house tax receipts have been produced to prove that construction was made after obtaining loan from Karur Vysya Bank under Ex.B19. The house tax receipts in the name of Balasubramaniam has also been produced as Exs.B10 and B11. These documents would clearly establish that Ex.B3 release deed has come into effect. Balasubramaniam and his wife and daughters are in possession and enjoyment of the suit schedule properties.

(D).Conclusion:

57.In view of the above said deliberations, there are no merits in both the appeals and the judgment and decree of the trial Court are confirmed. Accordingly, both the First Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(C.V.K.J.,)

(R.V.J.,)

12.12.2025.

Index :Yes/No
Internet :Yes/No
NCC : Yes/No
msa



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WEB COPY To

- 1.The Principal District Judge
Ramanathapuram
- 2.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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**C.V.KARTHIKEYAN,J.
AND
R.VIJAYAKUMAR,J.**

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Pre-delivery Common Judgment made in
A.S.(MD).Nos.59 & 74 of 2017
CMP(MD).Nos.4986 and 3912 of 2017

12.12.2025